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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,427	04/04/2006	Hugh Sample Munro	ETH5029USPCT	3197
28977	7590	05/13/2009		
MORGAN, LEWIS & BOCKIUS LLP			EXAMINER	
1701 MARKET STREET			JACKSON, BRANDON LEE	
PHILADELPHIA, PA 19103-2921			ART UNIT	PAPER NUMBER
			3772	
MAIL DATE		DELIVERY MODE		
05/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/538,427

**Applicant(s)**

MUNRO ET AL.

**Examiner**

BRANDON JACKSON

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is in response to amendments/arguments filed 4/1/2009. Currently, claims 1-20 are pending in the instant application.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/1/2009 has been entered.

#### ***Response to Arguments***

Applicant's arguments filed 4/1/2009 have been fully considered but they are not persuasive. Applicant argues the first and second portions of the Webster device cannot be made of the same material because one portion is hydrophilic and the other is hydrophobic. However, Webster does state the skin contacting portion is hydrophilic, but Webster does not state the other layer is hydrophobic. Webster states the non-skin contacting layer does not swell or swells less (cols. 1-2, lines 66-6). Therefore, the non-skin contacting layer may be made of the same material, just a different absorbency of the same material, because both layers are hydrophilic. Moreover, Webster discloses

both layers may be formed of a polyamide or polyurethane (cols. 2-3, lines 29-1; col. 4, lines 47-59).

Applicant argues the Webster device does not teach a wound contacting layer having a relatively continuous internal structure because it is formed of a water swellable polymeric material. However, none of Applicant's citations, for where Webster teaches that the wound contacting layer is not relatively continuous, actually state that the structure is not relatively continuous and is cellular in structure. The wound contacting layer does have aperture, but the internal structure is still relatively continuous in order to funnel most of the moisture through the apertures. Moreover, Applicant has not defined what "substantially continuous" means. This is a vague term without a standard of how to judge what is substantially continuous and what is not continuous at all.

Applicant argues that Webster does not teach a wound contacting layer that comprises a hydrogel. However, Webster teaches a wound contacting layer comprising a hydrogel because the layer is made up of up to 95% water (col. 2, 49-55). Therefore, Webster teaches a hydrogel wound contacting layer.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, 13-15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Webster (US Patent 4,541,426). Webster discloses a wound dressing comprising a first portion (2) comprising a flexible plasticized hydrophilic polymer matrix with an cellular internal structure (col. 2, lines 49-64), a second portion (1) comprising a flexible plasticized hydrophilic (col. 2, lines 4-6) matrix that is relatively continuous (col. 5, lines 42-44), and apertures (4) providing fluid communication (fig. 1) between the first and second portions (2, 1). The hydrogel composition (2, 1) is adhered to the skin, wherein the second portion (1) has a wound facing surface that contacts the skin (col. 5, lines 10-12), as shown in Fig. 3. The wound dressing further comprises an absorbent layer (6) for receiving fluid through the hydrogel composition (2, 1) and comprising a layer of hydrophilic foam (col. 7, lines 54-56), a removable cover sheet (3) to cover the wound facing surface of the hydrogel composition (2, 1). The wound dressing is sterile and packaged in a microorganism-impermeable container (col. 5, lines 21-23). The hydrogel composition (2, 1) comprises a synthetic polymer; therefore, it inherently must have been formed through the polymerization of at least one monomer.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (US Patent 4,541,426). Webster substantially discloses the claimed invention; see rejection to claim 1 above. Webster further discloses the first portion to comprising a porous internal structure and the second portion that is relatively continuous, not as porous. Therefore, the ratio of cell void between the first portion and the second portion that is greater than 1:1. The 1:3 ratio provides no advantage, is not used for a particular purpose, and does not solve a stated problem. The Webster device would function equally as well with a 1:3 ratio or greater. Therefore, it is a mere design choice and would be obvious to one of ordinary skill in the art at the time of the invention to modify the ratio of sell voids to be greater than 1:3.

With respect to claim 20, Applicant fails to disclose criticality to why the two portions should be integrally formed rather than laminated together. In addition, Applicant's specification states the two portions may be integrally formed or may be laminated together (pg. 10, lines 3-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the two portions by laminating or integrating. The method step would have resulted from the use of the Webster device.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (US Patent 4,541,426) in view of Takahashi et al. (US Patent 5,972,452). Webster substantially discloses the claimed invention; see rejection to claim 1 above. Webster fails to disclose the apertures of the second portion continuing into the first portion without penetrating it entirely. However, Takahashi teaches a wound dressing (10) comprising apertures (24) that penetrate a layer (20) without fully penetrating the layer (20). Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the apertures in the first portion to be varying lengths that do not fully penetrate the layer, as taught by Takahashi, in order to vary the flexibility of the layer as desired by the user.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (US Patent 4,541,426) in view of Nielsen (US Patent Application Publication 2003/0153860). Webster substantially discloses the claimed invention; see rejection to claim 1 above, and a wound dressing having a substantially uniform thickness (fig. 3). Webster fails to disclose an absorption capacity between 30 and 10,000 %, a water

uptake rate of at least 2 micro-L/s, a thickness between about 0.5 to 10 mm, a substantially liquid-impermeable backing layer, and adhesive on the backing layer. However, Nielsen teaches a wound dressing (fig. 1) comprising a substantially liquid-impervious (par. 0054) backing layer (1) covering an absorbent layer (2) and whose edges extend beyond the absorbent layer (2), an adhesive layer (3) disposed on the backing layer (1) all the way to the edges of the backing layer (1) and on a portion of the absorbent layer (2) while extending beyond the absorbent layer (2), rapid fluid uptake (par. 0072), and high absorption capacity (par. 0029). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Webster device to have a backing layer and adhesive that extend beyond the absorbent pad, as taught by Webster, in order to trap liquid within the absorbent layer and adhesive only on a portion of the hydrogel composition in order to facilitate rapid fluid uptake. The absorption capacity between 30 and 10,000%, fluid uptake rate of at least 2 micro-L/2, and thickness between about 0.5 to 10 mm provides no advantage, is not used for a particular purpose, and does not solve a stated problem. The Webster/Nielsen device would function equally as well with an absorption capacity between 30 and 10,000%, a fluid uptake rate of at least 2 micro-L/2, and a thickness between about 0.5 to 10 mm. Therefore, it is a mere design choice and would be obvious to one of ordinary skill in the art at the time of the invention to modify the Webster/Nielsen device to have an absorption capacity between 30 and 10,000%, a fluid uptake rate of at least 2 micro-L/2, and a thickness between about 0.5 to 10 mm.



Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (US Patent 4,541,426) in view of Gilman et al. (US Patent 5,811,116). Webster substantially discloses the claimed invention; see rejection to claim 1 above. Webster fails to disclose a removable cover provided with projections into the apertures of the hydrogel sheet. However, Gilman discloses a patch (14) comprising a removable cover (22) with projections that extend into the aperture (col. 4, lines 25-27). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Webster device with the removable cover, as taught by Gilman, in order to preserve the shape of the apertures before removal of the release cover.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772